



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DECISION FOR PUBLIC RELEASE

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Matter of: Ogden Support Services, Inc.

File: B-270012.2

Date: March 19, 1996

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Dennis J. Riley, Esq., and Joseph G. Billings, Esq., Riley & Artabane, P.C., for American Systems Corporation, the intervenor.

Diane Florkowski, Esq., Central Intelligence Agency, for the agency.

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DIGEST

Agency's technical evaluation, and source selection based upon that evaluation, was not found reasonable because the agency evaluated the protester's and awardee's proposals nearly identically under the solicitation's past performance evaluation factor without the record containing sufficient information and analysis to establish equality.

DECISION

Ogden Support Services, Inc. protests the award of a contract to American Systems Corporation (ASC) under request for proposals (RFP) No. 95-W001, issued by the Central Intelligence Agency (CIA), Office of Information Technology, for mail and courier support services. Ogden challenges the agency's evaluation of technical and cost proposals, conduct of discussions, and source selection decision.

We sustain the protest.

The RFP provided for the award of a cost-plus-award-fee, level-of-effort (LOE) contract for mail and courier support services for a base period of June 1, 1995, to September 30, 1995, with 2 priced option years and 2 unpriced option years. The RFP's statement of work (SOW) informed offerors that the required total level of effort was 22 full-time persons per year and that contractors would provide personnel to work a standard 40-hour workweek, consisting of 5 consecutive duty days and 8-hour shifts. Offerors were also informed that contractor personnel would not normally be required to work overtime, weekends, or federal holidays,

but that the government reserved the right to order additional hours to meet its requirements. The RFP also set forth a minimum transition schedule that required the contractor to provide six persons, including one task leader, within 30 calendar days of award, with another six persons (including one other task leader) being provided every 6 weeks until the contractor had provided 22 persons by September 30. Offerors were permitted to offer a quicker transition, or "ramp-up," schedule.

All 22 personnel were identified by the RFP as key personnel, for which offerors were required to provide resumes. The SOW required that all personnel, prior to starting work, have received "top secret/industrial security staff approval" clearances. Personnel were also required to have a high school diploma or general equivalency degree (GED) certificate.¹ The SOW also provided that all personnel would be trained in the agency's distribution requirements and that this training should not exceed four to six weeks. The transition period was provided to allow offerors the opportunity to obtain personnel meeting these contract requirements.

The RFP provided for award to the offeror whose proposal represented the best value to the government, cost/price and other factors considered. The following technical evaluation factors and subfactors were identified:

1. Personnel
 - a. Qualifications
 - b. Availability/Clearances
2. Project Management and Control
 - a. Staffing Plan
 - b. Management Plan
 - c. Training, Safety, and Certifications
3. Past Performance

The personnel factor was stated to be more important than the project management/control factor, and both the personnel and project management/control factors were stated to be significantly more important than past performance. The RFP provided that cost would not be weighted, but would be evaluated on the basis

¹The high school diploma or GED certificate requirement is a new contract requirement. [DELETED]

of "cost realism and actual cost."² Offerors were informed that cost realism would be evaluated on the basis of the LOE stated in the SOW.

Detailed proposal preparation instructions were provided for each evaluation factor and subfactor. Regarding the past performance factor, offerors were requested to identify "at least three similar [g]overnment and industry contracts received in the past three years or currently in negotiation [with] performance of work similar to the effort described in this RFP." The RFP also defined "similar experience" to be providing support to "similar type mail and courier efforts and/or administrative support service type efforts."

The CIA received proposals from Ogden, the incumbent contractor, and ASC, by the closing date for receipt of proposals. ASC proposed approximately [DELETED] more man-hours than did Ogden, consisting of approximately [DELETED] more for the 4-month base period and approximately [DELETED] more for each option year. The difference in the offerors' proposed hours for the option years was because Ogden's man-year consists of [DELETED] direct-productive hours, while ASC's man-year consists of [DELETED] direct-productive hours.

Both proposals were determined to be in the competitive range, and technical and cost discussions were conducted with each offeror. Regarding Ogden's cost proposal, the CIA was concerned with the protester's [DELETED] which was much [DELETED] and that Ogden's [DELETED] was not consistent with Ogden's approved Cost Accounting Standards (CAS) disclosure statement.³ Hearing Transcript (Tr.) at 15, 73-74. The CIA asked Ogden when it intended to submit its proposed disclosure statement amendment or modification to the cognizant contracting officer, to explain its [DELETED]. Ogden replied by providing the CIA with its proposed CAS disclosure statement revisions; Ogden, however, did not indicate when it intended to submit its proposed accounting system revisions to the cognizant contracting officer. Ogden also informed the CIA that [DELETED].

²The RFP did not identify the relative weight assigned to the cost factor. Where a solicitation fails to explicitly state the relative weight of cost in the evaluation scheme, it must be presumed that cost and technical considerations will be accorded equal weight and importance in the evaluation. Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29.

³Ogden, as a CAS covered contractor, is required to file a disclosure statement, describing its cost accounting practices and procedures, with the cognizant administrative contracting officer and contract auditor. See 48 C.F.R. Subpart 9903.202-1 (1994).

The agency's technical management evaluation team (TMET) evaluated Ogden's and ASC's technical proposals as follows in the final evaluation:

	Ogden	ASC
Personnel (50 pts)	48.68	47.52
Project Management/Control (40 pts)	38.02	39.34
Past Performance (10 pts)	10	9.6
TOTAL	96.70	96.46

Both firms' proposals were evaluated as containing a number of strengths and only two weaknesses. One of the weaknesses of ASC's proposal was that of ASC's seven identified contract references, only two "demonstrated favorable performance on mail and courier/similar type service contracts."

Ogden's proposed total cost plus fee was slightly less than ASC's. The firms' proposed costs were evaluated by the agency's cost evaluation team (CET) with the support of the contract audit division (CAD). The CET determined that ASC had proposed more labor hours than had Ogden for the base period, as well as for the two priced option years, and that, although Ogden had submitted a lower total "price" (calculated by the CET as total proposed costs plus award fee), ASC's contract price per hour was lower than Ogden's because ASC proposed more man-hours. Specifically, the CET concluded that "ASC's proposal . . . represents a marginal cost savings over Ogden's when comparing the total dollars to hours ratio." The CET noted that, while Ogden had proposed [DELETED] Ogden's proposed accounting system revision were not accepted, Ogden's costs would be higher than proposed.

The technical and cost evaluations were provided to the source evaluation board (SEB). The SEB found that both offerors' proposals were in the "very good range," demonstrated an overall competence, and that major strengths significantly outnumbered the identified weaknesses. Regarding the firms' proposed costs, the SEB noted that ASC had proposed more hours than had Ogden and that ASC's "proposed hourly rate is lower than Ogden's proposed hourly rate." The SEB also expressed concern with Ogden's [DELETED] noting that Ogden had not submitted disclosure statement revisions to the cognizant contracting officer responsible for negotiating [DELETED]. The SEB concluded that "[g]iven the contract shall be a [LOE] contract, ASC's proposal provides savings to the [g]overnment based upon the total hours and costs proposed." Consequently, the SEB recommended award to ASC as the firm whose proposal offered the best value to the government.

The source selection authority (SSA) concurred with the SEB's recommendation of award to ASC. The SSA found that ASC's and Ogden's proposals were technically equal based solely upon the closeness of the technical point scores. In this regard, the record shows that the SSA did not review the proposals or evaluation documentation underlying the SEB's recommendations. Indeed, the SSA erroneously stated that ASC's proposal was rated higher than Ogden's under the past performance factor and that ASC had proposed a more accelerated transition schedule. The SSA concluded that ASC's offer represented the best value to the government because ASC had offered approximately [DELETED] more man-hours than had Ogden at a lower hourly rate. Specifically, the SSA stated:

"As the [g]overnment is procuring manpower on a LOE basis the average price per hour is a significant issue. The proposed average price per labor hour is derived by dividing the total proposed price for each contractor by their total proposed labor hours. ASC's proposed price per labor hour of [DELETED] is lower than Ogden's proposed price of [DELETED] per hour."

Award was made to ASC, and this protest followed. Performance has been stayed pending our decision in this matter.

Ogden challenges the technical evaluation and conclusion that the firms' offers were essentially equal. Specifically, Ogden complains that ASC received an "excellent" technical rating (with a score nearly identical to Ogden's perfect score) for past performance, even though the awardee's proposal does not sufficiently demonstrate mail/courier service or similar experience, as required by the RFP, and the TMET assessed ASC's lack of three references for mail/courier or similar support services contract to be a proposal weakness.

In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Here, there is insufficient information and analysis in the record to establish a reasonable basis for the past performance score ASC received vis-a-vis Ogden's past performance score.

As noted above, the TMET in its final technical evaluation noted two weaknesses in ASC's proposal, one of which concerned ASC's past performance. Specifically, the TMET found a weakness that only two of ASC's contract references "demonstrated favorable performance on mail and courier/similar type service contracts." Although the RFP requested a demonstration of mail/courier or similar service experience on at least three contracts, the TMET gave ASC's proposal a nearly perfect score under

this evaluation factor.⁴ The CIA points out that all five of ASC's contract references who responded to the agency's inquiry (out of seven references provided) gave favorable recommendations. It contends that ASC's proposal identified four contract references for either mail or courier service or for similar administrative type efforts. However, the agency has not identified which of the seven contract references in ASC's proposal led the agency to this conclusion. ASC's contract descriptions, which are sketchy because of their classified status, indicate that only two contracts included any meaningful mail or courier service as part of the overall contract requirements, and none of these contracts were exclusively for such services. It may be that the work performed by ASC under the contracts cited in its proposal, either individually or cumulatively, constituted sufficient evidence of the firm's past performance to warrant ASC's rating. Without additional information and analysis in the record, however, we cannot conclude that this is the case.

Ogden's proposal received a perfect past performance score based upon its showing of specific experience in performing the contract requirements that are the subject of this RFP and its identification of two other contracts with substantial mail or courier service requirements, and the TMET assessed Ogden's demonstrated experience to be a proposal strength. This evaluated strength in Ogden's proposal, however, translated into only a [DELETED] score advantage under the past performance factor because of the high point score given ASC. Since the record is insufficient to support the agency's past performance evaluation, it is insufficient to support the close scores of Ogden's and ASC's proposals under this evaluation factor. See J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380. Thus, it is not clear that the SSA had a reasonable basis to determine that Ogden's and ASC's proposals were technically equal overall.

The record shows that the SSA relied upon the SEB's report in determining that the firms' proposals were essentially equal; the SEB report only details the point scores received by the firms under each of the evaluation factors and does not provide the basis for the scores. There is no indication in the record, nor assertion from the agency, that the SSA reviewed, or was familiar with, the TMET's evaluation findings and assessment of proposal strengths and weaknesses.

Indeed, in making the award selection, the SSA misapprehended several facts. For example, the SSA erroneously states in his selection decision that ASC's proposal was rated higher than Ogden's under the past performance factor. Also, the SSA erroneously stated both in his selection decision and during the hearing that ASC's

⁴The agency's source selection plan guidance to evaluators provided that an "excellent" score, such as provided to ASC's proposal under this factor, should only be given where "[t]here are all strong points and no weaknesses or deficiencies identified."

proposal of more man-hours was due to ASC proposing a more accelerated transition schedule, which the SSA apparently regarded as a proposal strength, Tr. at 86-87, 90; Ogden, as the TMET correctly found, proposed a more accelerated transition schedule than did ASC. Finally, the SSA apparently believed that the ASC's offer of more man-hours to perform the contract would be beneficial. However, the LOE called for by the RFP does not vary with the offeror for the basic contract work; it is the same 22 person LOE for the full years of performance, regardless of which company performs the contract. Thus, ASC's estimates of more hours for performance for the full years does not mean that ASC was actually offering anything more than Ogden offered for the basic contract work. In this regard, the agency's contracting officer testified during the hearing that ASC was not going to do anything differently from Ogden under the contract; "it will be the same work." Tr. at 60.

Based on this record, it is unclear whether the SSA would have considered the difference in the two firms' evaluated past performance a meaningful discriminator, such that Ogden's proposal would have been considered technically superior, or whether Ogden's and ASC's proposals would still have been considered technically equal; we sustain the protest on this basis. If the two proposals are reasonably found technically equal, then ASC's lower cost would result in that firm's selection. If Ogden's proposal is reasonably determined technically superior to ASC's lower cost proposal, the agency would have to perform a cost/technical tradeoff analysis to determine which offer represents the best value to the government.

Ogden also argues that the CIA irrationally determined which proposal offered the most favorable cost terms by comparing the ratios of the offerors' total proposed price (calculated as the sum of the estimated costs and award fee) to their proposed total man-hours, and deriving a contract price labor rate, which it then used in making the award selection. As indicated, the LOE for the basic contract work requiring 22 persons working the same number of hours should have been identical; however, the offerors' cost proposals were based upon differing man-hour estimates, even for the option years that should involve the same number of hours, because of the firms' differing man-years.

The effect of the agency's contract price labor rate calculation was to normalize the labor hours among the offerors for the entire contract period, such that even though Ogden's proposed total cost is lower than ASC's, ASC's cost per hour would be low because of its greater number of proposed hours. The problem with this calculation here is that the bulk of difference between the proposed hours was during the transition, phase-in period, which contemplated the possibility of differing technical approaches and hours, and that, by including these hours in calculating the contract price per hour, ASC's cost advantage is exaggerated, presuming these phase-in

hours constituted ASC's technical approach.⁵ Moreover, the award selection did not consider the offerors' probable costs, but only proposed costs, even though the CIA questioned (we think reasonably) Ogden's [DELETED] because it was not persuaded by Ogden's [DELETED] the agency's concern with [DELETED] was not mitigated due to Ogden's [DELETED].

We recommend that the CIA reevaluate the firms' technical proposals, and determine and document whether they are technically equal. If the proposals are reasonably found technically equal, there is no basis to disturb the award.⁶ If Ogden is found to be technically superior, the agency should conduct discussions with the firms if necessary; complete a probable cost analysis of the cost proposals; conduct a cost/technical tradeoff analysis consistent with this decision; and make a new source selection. If the CIA determines that award should more appropriately be made to Ogden, the CIA should terminate ASC's contract and make award to Ogden. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8). The protester should submit its certified claim for costs to the contracting agency within 90 days of receiving this decision. Bid Protest Regulations, § 21.8(f)(1).

The protest is sustained.

Comptroller General
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⁵As indicated, the SSA erroneously believed that these additional hours reflected ASC's more accelerated transition schedule, even though Ogden's proposed schedule is more accelerated. From our review, we cannot ascertain what these additional hours in ASC's proposal represent.

⁶Ogden also protests a number of other aspects of the agency's technical evaluation and the agency's conduct of discussions. We have reviewed these other allegations and find them to be without merit.